

1 Ryan Baker (SBN 214036)
rbaker@bakermarquart.com
2 Scott Malzahn (SBN 229204)
smalzahn@bakermarquart.com
3 Baker Marquart LLP
4 10990 Wilshire Blvd. 4th Floor
Los Angeles, CA 90024
5 Telephone: (424) 652-7800
6 Facsimile: (424) 652-7850

7 *Attorneys for Plaintiffs*
8 *FilmOn.TV NY Inc., Musion Das*
Hologram Limited, and Uwe Maass

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 FILMON.TV NY INC. d/b/a
13 HOLOGRAM USA; MUSION DAS
14 HOLOGRAM LIMITED; and UWE
15 MAASS,

16 Plaintiffs,

17 v.

18 CIRQUE DU SOLEIL, INC.; CIRQUE
19 DU SOLEIL AMERICA, INC.; CIRQUE
20 DU SOLEIL HOLDING USA, INC.;
21 MGM RESORTS INTERNATIONAL;
and DOES 1 through 10,

22 Defendants.

Case No. 14-cv-02241

COMPLAINT

DEMAND FOR JURY TRIAL

24 **INTRODUCTION**

25 1. In 1862, John Pepper and Henry Dircks invented "Pepper's Ghost," an
26 illusion technique, which, over the last 150 years, has appeared in movies,
27
28

1 concerts, magic shows and amusement park rides. Many of us have sat alongside
2 Pepper's Ghost in Disneyland's Haunted Mansion. Today a new incarnation of
3 Pepper's Ghost exists – Musion Eyeliner technology. Musion Eyeliner uses a
4 patented system to project three-dimensional images virtually indistinguishable
5 from real-life bodies. Musion Eyeliner creates the illusion of life-size, three-
6 dimensional moving images that may appear within a live setting. Musion
7 Eyeliner has gained notoriety around the world for the quality of its holographic
8 projections. In 2012, this technology was used at the Coachella Music Festival to
9 create a three-dimensional image of deceased rapper Tupac Shakur, who appeared
10 to the audience as if he were performing live on stage with Dr. Dre and Snoop
11 Dogg.

12 2. Musion Eyeliner is protected by two U.S. patents – U.S. patent no.
13 5,865,519 (the “519 Patent”) and U.S. patent no. 7,883,212 (the “212 Patent”
14 and, along with the ‘591 Patent, the “Patents At Issue”). Plaintiff Uwe Maass
15 holds the ‘519 patent. Plaintiff Musion Das Hologram (“Musion DH”) holds the
16 ‘212 patent. Maass and Musion DH have licensed certain rights to practice the
17 Patents At Issue to Plaintiff FilmOn.TV NY Inc. (“Hologram USA”). Plaintiffs
18 have entered into agreements to license Musion Eyeliner technology for use in
19 various settings around the world. But no such license has been provided to any of
20 the Defendants in this case. Although it has been widely acknowledged that
21 Defendants employ the Musion Eyeliner technology to create a three-dimensional
22 hologram of Michael Jackson in Cirque de Soleil's “Michael Jackson: One,”
23 Defendants do not possess a valid license to practice that technology. Such a
24 license may only be provided by Plaintiffs. In spite of their knowledge of
25 Plaintiffs' rights, none of the Defendants have approached Plaintiffs to license
26 Musion Eyeliner.

3. Defendants' infringement of the Patents At Issue has damaged and continues to damage Plaintiffs. Plaintiffs seek to enjoin Defendants' wrongful conduct. Plaintiffs also seek damages they have incurred as a result of Defendants' infringing conduct.

THE PARTIES

5. Plaintiff FilmOn.TV NY Inc. d/b/a "Hologram USA," also known as "Musion" ("Hologram USA"), is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 301 N. Canon Drive, Beverly Hills, California 90210.

6. Plaintiff Musion Das Hologram Limited ("Musion DH") is a corporation organized and existing under the laws of the United Kingdom, having a principal place of business at 90 High Holborn, London, United Kingdom WC1V 6XX.

7. Plaintiff Uwe Maass ("Maass") is a citizen of Germany and an individual residing in Dubai in the United Arab Emirates.

8. On information and belief, defendant Cirque du Soleil, Inc. is a corporation organized and existing under the laws of Canada, having a principal place of business at 8400 2e Avenue, Montréal, QC H1Z 4M6, Canada.

9. On information and belief, defendant Cirque du Soleil Holding USA, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 980 Kelly Johnson Drive, Las Vegas, Nevada 89119.

10. On information and belief, defendant Cirque du Soleil America, Inc. is a corporation organized and existing under the laws of State of Delaware, having a principal place of business at 980 Kelly Johnson Drive, Las Vegas, Nevada 89119.

1 11. On information and belief, defendant MGM Resorts International
 2 (“MGM”) is a corporation organized and existing under the laws of the State of
 3 Delaware, having a principal place of business at 3600 Las Vegas Blvd, Las
 4 Vegas, Nevada 89109. It owns and operates the Mandalay Bay Resort and Casino
 5 (“Mandalay Bay”) in Las Vegas.

6 **JURISDICTION AND VENUE**

7 12. This is a civil action for patent infringement arising under the Patent
 8 Laws of the United States of America, 35 U.S.C. § 101, *et seq.*

9 13. This Court has jurisdiction over the subject matter of this Complaint
 10 pursuant to 28 U.S.C. §§ 1331 and 1338.

11 14. This Court has personal jurisdiction over Defendants for at least the
 12 following reasons: (i) Defendants regularly do business or solicit business, engage
 13 in other persistent courses of conduct, and/or derive substantial revenue from
 14 products and/or services provided to individuals in this District and in this State;
 15 (ii) and Defendants have purposefully established substantial, systematic, and
 16 continuous contacts with this District and expect or should reasonably expect to be
 17 hauled into court here. Thus, this Court’s exercise of jurisdiction over Defendants
 18 will not offend traditional notions of fair play and substantial justice.

19 15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§
 20 1391(b)-(c) and 1400(b) because Defendants do business in and reside this District,
 21 and Defendants are subject to personal jurisdiction in this District.

22 **FACTUAL ALLEGATIONS**

23 16. The Musion Eyeliner system is an amazing new technique of
 24 projecting video to create the illusion of life-size, full color, 3D moving images.
 25 All of the images used in this system are three-dimensional, but are projected as
 26 two-dimensional images into a three-dimensional stage set. The mind of the
 27 audience creates the 3D illusion. This means that production costs are minimal,
 28

1 needing only single camera lens for filming and a single projector for the playback.

2 17. Musion Eyeliner is protected by patents in the United States. As
3 described in the '519 and '212 patents, Musion Eyeliner is a proprietary high
4 definition video projection system that allows moving images to appear within a
5 live stage setting. A white projection screen or other reflecting surface is placed on
6 the floor of the stage. An image source (preferably, a computer-controlled
7 intelligent light amplifier) projects an image onto the reflecting surface, which
8 projects the image onto a thin transparent foil arranged on stage at an angle of
9 about 45 degrees. From the audience's perspective, the image produced on the foil
10 appears as a life-like three-dimensional image.

11 18. Hologram USA has licensed the exclusive right to exploit the Musion
12 Eyeliner system (including the Patents At Issue) in all markets in the United States
13 and Canada, with the exception of adult entertainment. Accordingly, Hologram
14 USA has the exclusive right to use the Musion Eyeliner system and to sublicense
15 its use to third parties in those territories.

16 19. Based on information and belief, Defendants are infringing on one or
17 more of the claims of the Patents At Issue.

18 20. Cirque produces a show entitled "Michael Jackson: One", which is
19 based at MGM's Mandalay Bay on the Las Vegas strip. Based on information and
20 belief, Defendants use the patented Musion Eyeliner system to create a three-
21 dimensional projection of Michael Jackson in this show. The Defendants did not
22 obtain any authorization from Hologram USA to use this patented technology.

23 21. Hologram USA has placed Cirque on notice of its infringing
24 activities, but Cirque has not stopped using Musion Eyeliner.

25 22. Defendants' infringement of the '519 and '212 patents has caused and
26 will continue to cause monetary and other damages to Plaintiffs.

FIRST CLAIM FOR RELIEF – Against Cirque
(Infringement of Patent No. 5,865,519)

23. Plaintiffs incorporate by reference the preceding averments set forth in paragraphs 1-22.

24. U.S. Patent No. 5,865,519 (“the ‘519 patent”) duly and lawfully issued on February 2, 1999 to Uwe Maass and is titled “Device For Displaying Moving Images In The Background Of A Stage.” The claims of the ‘519 patent are directed at a device or apparatus for representing three-dimensional moving images in the background of a stage or the like using an image source. A true and correct copy of the ‘519 patent is attached as Exhibit A.

25. Maass is the owner of the ‘519 patent, and Hologram USA has licensed the exclusive right to exploit this patent in all markets in the U.S. and Canada with the exception of adult entertainment. Maass and Hologram USA have the right to bring this suit for injunctive relief and damages.

26. On information and belief, Cirque has been, is currently, and unless enjoined, will continue to directly infringe one or more claims of the ‘519 patent by making, using, offering to sell, and selling within the United States the patented invention, including but not limited to the improper and unauthorized use of the Musion Eyeliner system to create a three-dimensional image of Michael Jackson on stage. Cirque’s products and services embody and/or practice one or more claims of the ‘519 patent.

27. Cirque’s infringing activities have caused and will continue to cause Plaintiffs irreparable harm, for which it has no adequate remedy at law, unless Cirque’s infringing activities are enjoined by this Court in accordance with 35 U.S.C. § 283.

28. Plaintiffs have been and continue to be damaged by Cirque’s infringement of the ‘519 patent in an amount to be determined at trial.

1 29. Cirque willfully and deliberately infringes the '519 patent in disregard
2 of Plaintiffs' rights.

3 **SECOND CLAIM FOR RELIEF – Against Cirque**

4 **(Infringement of Patent No. 6,757,674)**

5 30. Plaintiffs incorporate by reference the preceding averments set forth
6 in paragraphs 1-29.

7 31. U.S. Patent No. 7,883,212 ("the '212 patent") duly and lawfully
8 issued on February 8, 2011 to Ian O'Connell and James Rock and is titled
9 "Projection Apparatus And Method For Pepper's Ghost Illusion." The claims of
10 the '212 patent are directed at a projection apparatus arranged to project an image
11 of an object upon an inclined, partially reflective, screen so as to give a false
12 perception of depth and a method for constructing such an apparatus. A true and
13 correct copy of the '212 patent is attached as Exhibit B.

14 32. In or about September 2006, Ian O'Connell and James Rock assigned
15 all their interests in the anticipated application for the '212 patent to Musion
16 Systems Limited. A true and correct copy of the Patent Assignment Abstract of
17 Title is attached as Exhibit C.

18 33. In or about September 2013, Musion Systems Limited assigned all its
19 interests in the '212 patent to Musion DH. *See* Exhibit C.

20 34. Musion DH is the owner of the '212 patent, and Hologram USA has
21 licensed the exclusive right to exploit this patent in all markets in the U.S. and
22 Canada with the exception of adult entertainment. Musion DH and Hologram
23 USA have the right to bring this suit for injunctive relief and damages.

24 35. On information and belief, Cirque has been, is currently, and unless
25 enjoined, will continue to directly infringe one or more claims of the '212 patent
26 by making, using, offering to sell, and selling within the United States the patented
27 invention, including but not limited to the improper and unauthorized use of the
28

1 Musion Eyeliner system to create a three-dimensional image of Michael Jackson
 2 on stage. Cirque's products and services embody and/or practice one or more
 3 claims of the '212 patent.

4 36. Cirque's infringing activities have caused and will continue to cause
 5 Plaintiffs irreparable harm, for which it has no adequate remedy at law, unless
 6 Cirque's infringing activities are enjoined by this Court in accordance with 35
 7 U.S.C. § 283.

8 37. Plaintiffs have been and continue to be damaged by Cirque's
 9 infringement of the '212 patent in an amount to be determined at trial.

10 38. Cirque willfully and deliberately infringes the '212 patent in disregard
 11 of Plaintiffs' rights.

12 **THIRD CLAIM FOR RELIEF – Against MGM**

13 **(Vicarious Liability for Infringement)**

14 39. Plaintiffs incorporate by reference the preceding averments set forth
 15 in paragraphs 1-38.

16 40. MGM is vicariously liable for Cirque's direct infringement of the
 17 Patents At Issue.

18 41. Based on information and belief, MGM was and is involved in a
 19 partnership with Cirque. MGM's Mandalay Bay on the Las Vegas strip serves as
 20 the permanent residence for Cirque's show, "Michael Jackson: One." MGM has
 21 named this theater the "Michael Jackson ONE Theatre." MGM has publicly
 22 referred to Cirque as its "partner."

23 42. Based on information and belief, pursuant to its partnership with
 24 Cirque, MGM possesses certain contractual rights and duties and has the ability to
 25 control Cirque's conduct in its theater.

26 43. MGM advertises the "Michael Jackson: One" show on its website for
 27 Mandalay Bay and sells tickets to the show over the internet on a Ticketmaster
 28

1 webpage devoted to Mandalay Bay. MGM actively promotes the show to
2 customers.

3 44. Based on information and belief, MGM financially benefits from
4 “Michael Jackson: One” and Cirque’s financial success at its theater.

5 45. Based on information and belief, MGM knew or should have known
6 that the Musion Eyeliner system is a patented technology. There are has been
7 substantial press coverage about this technology, especially after it was used to
8 create a three-dimensional image of Tupac Shakur at the Coachella Music Festival
9 in 2012.

10 46. Based on information and belief, MGM knew or should have known
11 that Cirque was using the Musion Eyeliner system to create a three-dimensional
12 image of Michael Jackson in its show at Mandalay Bay. There has been
13 substantial press coverage about the show, including articles that place MGM on
14 notice that the Musion Eyeliner system was used to create the highly publicized
15 three-dimensional image of Michael Jackson. Additionally, MGM knew or should
16 have known that Cirque was and is infringing the Patents At Issue.

17 47. In light of MGM’s close partnership with Cirque, MGM is vicariously
18 liable for infringement of the Patents At Issue.

19 **FOURTH CLAIM FOR RELIEF – Against MGM**

20 **(Active Inducement)**

21 48. Plaintiffs incorporate by reference the preceding averments set forth
22 in paragraphs 1-47.

23 49. Based on information and belief, MGM actively induced Cirque’s
24 direct infringement of the Patents At Issue.

25 50. Based on information and belief, MGM was and is involved in a
26 partnership with Cirque. MGM’s Mandalay Bay on the Las Vegas strip serves as
27 the permanent residence for Cirque’s show, “Michael Jackson: One.” MGM has
28

1 named this theater the "Michael Jackson ONE Theatre." MGM has publicly
2 referred to Cirque as its "partner."

3 51. MGM advertises the "Michael Jackson: One" show on its website for
4 Mandalay Bay and sells tickets to the show over the internet on a Ticketmaster
5 webpage devoted to Mandalay Bay. MGM actively promotes the show to
6 customers.

7 52. Based on information and belief, MGM knew or should have known
8 that the Musion Eyeliner system is a patented technology. There are has been
9 substantial press coverage about this technology, especially after it was used to
10 create a three-dimensional image of Tupac Shakur at the Coachella Music Festival
11 in 2012.

12 53. Based on information and belief, MGM knew or should have known
13 that Cirque was using the Musion Eyeliner system to create a three-dimensional
14 image of Michael Jackson in its show at Mandalay Bay. There has been
15 substantial press coverage about the show, including articles that place MGM on
16 notice that the Musion Eyeliner system was used to create the highly publicized
17 three-dimensional image of Michael Jackson. Additionally, MGM knew or should
18 have known that Cirque was and is infringing the Patents At Issue.

19 54. Based on information and belief, MGM knowingly induced the
20 infringement of the Patents At Issue.

21 55. Based on information and belief, MGM possessed a specific intent to
22 encourage Cirque to infringe the Patents At Issue.

23 56. Accordingly, MGM is liable for actively inducing infringement of the
24 Patents At Issue under 35 U.S.C. § 271(b).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that:

a. Judgment be entered that Defendants have infringed one or more claims of the '212 and '519 patents;

b. Judgment be entered permanently enjoining Defendants, their directors, officers, agents, servants, and employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors and assigns, from further acts of infringement of the '212 and '519 patents;

c. Judgment be entered that Defendants' infringement has been willful;

d. Judgment be entered awarding Plaintiffs all damages adequate to compensate it for Defendants' infringement of the '212 and '519 patents, including all pre-judgment and post-judgment interest at the maximum rate permitted by law, and including a trebling of such damages due to Defendants' willful infringement.

e. For reasonable attorneys' fees incurred in bringing and litigating this action;

f. For costs of suit herein;

g. Judgment be entered awarding all other relief as the Court deems proper.

DATED: March 24, 2014

BAKER MARQUART LLP

By: _____

Ryan Baker (Bar No. 214036)
rbaker@bakermarquart.com

*Attorneys for Plaintiffs FilmOn.TV NY
Inc., Musion Das Hologram Limited,
and Uwe Maass*

